

**STATE OF CALIFORNIA
DEPARTMENT OF INSURANCE**

300 Capitol Mall, 17th Floor
Sacramento, California 95814

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PROPOSED TEXT OF REGULATIONS FOR WORKSHOP

§ 2632.13. ~~Eligibility to Purchase Good Driver Discount Policy and Guidelines for~~
Determination of “Principally At-Fault.” Accidents

(a) This section sets forth the procedures an insurer shall follow to ~~In-determine ing a driver’s~~
~~qualification to purchase a good driver discount policy pursuant to California Insurance Code~~
~~Section 1861.025, an insurer shall determine the driver’s violation points and whether an insured~~
~~driver or a driver listed on an insurance application (hereinafter referred to as “driver”) may be~~
~~considered to be principally at-fault for an accident for the purposes of:~~

(1) Determining the driver’s eligibility for the Good Driver Discount policy pursuant to
Insurance Code Section 1861.025s as set forth in this section. This section shall also apply in
determining whether a driver was principally at fault in an accident for the purpose of, and

(2) Determining the driver’s driving safety record (First Mandatory Factor) pursuant to
section 2632.5.

(b) ~~Violation point counts and principally at fault accidents shall be determined as~~
~~follows:~~

(1) ~~The insurer may count one violation point count for each violation point count which~~
~~has been assessed by the California Department of Motor Vehieles under California Vehicle~~
~~Code section 12810, Subsection (a), (b), (c), (d), (e), (g) and (h), for traffic violation convictions~~
~~with conviction dates not more than three years proceeding the effective or renewal date of the~~
~~policy, and which have not been made confidential under the California Vehicle Code;~~

(2) ~~For violations not occurring in California, the insurer may count one violation point~~
~~count for each violation point count which would have been counted under subsection (1) above~~
~~had the violation occurred in California. Violation points shall not be counted pursuant to this~~
~~Subsection if violation points were counted for the violation pursuant to Subsection (b)(1) above;~~

(3) ~~The insurer may count one violation point if a driver was involved in an~~
~~accident which resulted only in damage to property if the driver was principally at fault in the~~
~~accident, as defined in Subsection (c). A driver may be determined to be principally at fault for~~
~~such an accident where the accident was a solo vehicle accident, subject to the exceptions set~~
~~forth in subsection (d).~~

(e) ~~a~~ A driver may be considered to be principally at-fault ~~in~~ for an accident if the
driver’s actions or omissions were a legal cause of the accident and the driver was at least 51
percent responsible of the proximate cause of the accident, subject to the exceptions set forth in

Subsections (c) and (d), and in accidents not resulting in death, if the damage to the property of any one person caused by the accident exceeded \$ 750.00, and, for an accident that resulted only in damage to property, if the total loss or damage caused by the accident exceeded \$1000.

(c~~d~~) It shall be rebuttably presumed that A a driver is not shall not be considered to be principally at-fault if the for an accident occurred under any of the following circumstances:

(1) The vehicle was lawfully parked at the time of the accident. A vehicle rolling from a parked position shall not be considered to be lawfully parked, but shall be considered as in the operation, of the last operator;

(2) The vehicle was struck in the rear by another vehicle, and the driver has not been convicted of a moving traffic violation in connection with the accident;

(3) The driver was not convicted of a moving traffic violation and the operator of another vehicle involved in the accident was convicted of a moving traffic violation;

(4) The driver's vehicle was damaged as a result of contact with a vehicle operated by a "hit and run" operator of another vehicle and the accident was reported to legal authorities within a reasonable time after the accident;

(5) The accident resulted from contact with animals, birds, or falling objects;

(d) It shall be conclusively presumed that a driver is not principally at-fault for an accident under the following circumstances:

(6~~1~~) The driver was responding to a call of duty as a paid or volunteer member of any police or fire department, first aid squad, or of any law enforcement agency, while performing any other governmental function in a public emergency; or.

(7~~2~~) The accident was a solo vehicle accident that was principally caused by a hazardous condition of which a driver, in the exercise of reasonable care, would not have noticed (for example, "black ice.") or in the exercise of reasonable care could not have avoided (for example, avoiding a child running into the street).

(e) An insurer providing insurance coverage at the time of an accident shall not make a determination that a driver was principally at-fault for an accident, ~~other than an indisputably solo vehicle accident and which is not of the type specified in subpart (d)~~, unless the insurer first does the following conducts an investigation.

(1) the insurer shall make an investigation of the accident. In conduction an investigation and determining whether the driver is principally at-fault for an accident, the insurer shall make reasonable efforts to obtain and consider information from the following sources:

(i) A police report, if available;

(ii) A statement from the driver;

(iii) Statement(s) from any other person(s) involved in the accident or witnesses to the accident; and

(iv) Any available physical evidence or documentation of the accident;

(2) ~~¶~~The insurer shall provide written notice to the insured of the result of such investigation, including any determination that the insured driver was principally at-fault. The notice shall specify the basis of any determination that a driver was principally at-fault and the basis of any determination that the accident resulted in bodily injury or death. The notice shall advise the insured of the right to reconsideration of the determination of fault, as set forth for in Subsection (e)(3);

(3) Within 30 days of receipt by the insured of a written notice required by Subsection (e)(2), the insured may request reconsideration of the insurer's determination that the ~~insured driver~~ was principally at-fault. ~~The insurer shall provide written notice of its decision upon reconsideration with 30 days of the insured's request therefor and the notice shall state the reasons for its decision upon reconsideration.~~ Within 30 days of receipt of the insured's request for reconsideration, the insurer shall provide the insured with a written decision, stating the reasons for its decision upon reconsideration. The reconsideration shall be made by an employee or agent of the insurer other than the employee or agent who made the determination being reconsidered. The right to reconsideration set forth herein shall not affect any other rights of the insured.

~~(f) If a driver had insurance that provided coverage for an accident, a subsequent insurer which did not provide coverage at the time of the accident and to whom an application for the issuance of a policy of insurance is made, or from whom a renewal policy is offered, may not consider the a driver to be principally at-fault for the accident unless the following circumstances apply steps are taken:~~

(1) ~~if~~The subsequent insurer contacts any insurer that who provided coverage at the time of the accident to confirm its principally at-fault determination against the driver or any other person involved in the accident and, if applicable, that the accident resulted in bodily injury or death charged the driver with a violation point for the accident in accordance with this Section, or the predecessor of this Section; or,

(2) A subscribing loss underwriting exchange carrier report contains sufficient information to find that the driver is principally at-fault for the accident as provided in subsection (b) and, if applicable, that the accident resulted in bodily injury or death if the driver was not covered by an automobile insurance policy delivered or issued for delivery in California and issued and in force pursuant to the laws of California at the time of the accident, and the insurer determines that the driver was principal at-fault as provided for in Subsection (g); or,

(3) If no insurer at the time of the accident made a principally at-fault determination for the accident:

(i) The driver confirms and the insurer records facts sufficient to find that the driver was principally at-fault for the accident as defined in subsection (b), and if applicable, that the accident resulted in bodily injury or death; or

(ii) The insurer obtains sufficient information to determine that the driver is principally at-fault for the accident as provided in subsection (b), and if applicable, that the accident resulted in bodily injury or death.

~~if the insurer of the driver at the time of the accident did not have notice of the accident and no other insurer of any person involved in the accident made a determination that any other driver was at least 51% of the proximate cause of the accident, and the insurer determines that the driver was principally at fault as provided for in Subsection (g).~~

~~(g) If a driver did not have insurance that provided coverage for an accident, and if no other insurer of any person involved in the accident made a determination that any other driver was at least 51% of the proximate cause of the accident, an insurer to whom an application for the issuance or renewal of a policy of automobile insurance is made may consider a driver to be principally at fault if the insurer has sufficient information to make that determination. For the purpose of this Subsection, the following shall apply:~~

~~(1) the insurer shall make reasonable efforts to obtain information concerning the accident from any insurer of a person involved in the accident;~~

~~(2) the insurer shall request sufficient information from the driver;~~

~~(3) upon reasonable request by the insurer, a driver shall provide sufficient information concerning the accident to the insurer for the insurer to determine whether the driver was principally at fault. If the driver fails or refuses to provide such information, then the insurer may count a violation point for the accident or may consider the driver to be principally at fault.~~

~~(h) An insurer that has made a determination that its insured was principally at fault in an accident shall not refuse to disclose that determination to any person involved in that accident, to any person legally responsible for damages resulting from that accident, or to an insurer or prospective insurer of any such person. The requirement for disclosure shall pertain only to the ultimate determination of its insured's fault, and disclosure shall not be required of any other information in its possession or any determination of fault of any person other than the insured.~~

~~(i) Notwithstanding any other provision of this section, in determining a driver's at-fault accident history, a driver's declaration, under penalty of perjury, attesting to his or her at-fault accident history, shall be sufficient proof of that accident history in the absence of contrary information from an independent source. For each principally at-fault accident determined from the information contained in the declaration, the declaration must provide facts sufficient to find that the driver is principally at-fault for the accident as defined in subsection (b) and, if applicable, that the accident resulted in bodily injury or death. If an insurer discovers that the declaration contains a fraudulent or material misrepresentation, the insurer may use that information to rate the policy, may cancel the policy pursuant to California *Insurance Code* sections 661 and 1861.03(c)(1) and take any other action authorized by law.~~

~~(1) Nothing in this subdivision shall prevent an insurer from using as evidence of a principally at-fault accident:~~

~~(i) information available from the public record of traffic violation convictions as set forth in section 2632.5(c)(1)(A); principally at-fault accidents as set forth in this section; or~~

~~(ii) information from a subscribing loss underwriting exchange carrier, provided that the insurer informs a driver of the source of the information upon which it relies at the time~~

that it makes the determination that a driver is principally at-fault for an accident and offers the driver the contact information for the source.

(2) Nothing in this subdivision shall prevent an insurer from asking follow-up questions about the information contained in the declaration, and nothing in this subdivision shall authorize a driver to refuse to answer a reasonable follow-up question.

(3) If an insurer discovers contrary information from an independent source disputing the driver's declaration, the insurer shall:

(i) Make reasonable efforts to confirm any principally at-fault notation on a subscribing loss underwriting exchange carrier report with the insurer at the time of the accident, and notify the driver in writing and request that the driver confirm the accuracy of the contrary information or dispute the accuracy and provide further evidence to support the drivers declaration within ten days of the date that the request is sent.
~~discovery of the contrary information and allow the driver at least five days to provide a response.~~

(ii) If the driver confirms the accuracy of the contrary information and the insurer records the contrary information and the driver's confirmation, the insurer may use the information to determine whether the driver is principally at-fault for the accident pursuant to subsection (b), and, if applicable, that the accident resulted in bodily injury or death and rate the policy accordingly.

(iii) If the driver disputes the accuracy of the contrary information, the insurer shall, considering all of the information available to it, determine whether the driver is principally at-fault pursuant to subsection (b) and, if applicable, that the accident resulted in bodily injury or death.

(iv) If the driver does not respond to the insurers request to confirm the accuracy of the contrary information, the insurer may only find the driver to be principally at-fault as follows:

(a) If the insurer that provided coverage at the time of the accident determined the driver to be principally at-fault for the accident in accordance with this section and, if applicable, that the accident resulted in bodily injury or death;
or

(b) If no insurer at the time of the accident made a principally at-fault determination and the subsequent insurer has sufficient information to find that the driver is principally at-fault for the accident as provided in subsection (b), and if applicable that the accident resulted in bodily injury or death.

~~Within 45 days of the effective date of this subsection, each insurer writing private passenger automobile insurance shall file with the Department's Rate Filing Bureau (1) evidence demonstrating its compliance with this subsection or (2) a plan demonstrating how it will comply with this subsection. If the insurer files a plan demonstrating how it will comply with this subsection, it shall, within 120 days of the effective date of this subsection, file class plan and/or rate applications which are in compliance with this subsection. For insurers whose plan requires the Commissioner's prior approval of a revised class plan and/or rate application to achieve compliance, the insurer shall implement the revised class plan and/or rate application in~~

~~accordance with the terms of the Commissioner's approval of the revised class plan and/or rate application.~~

(h) In insurer that has made a determination that its insured was principally at-fault in an accident shall not refuse to disclose that determination to any person involved in that accident, to any person legally responsible for damages resulting from that accident, or to an insurer or prospective insurer of any such person. The requirement for disclosure shall pertain only to the ultimate determination of its insured's fault and, if applicable, that the accident resulted in bodily injury or death, and disclosure shall not be required of any other information in its possession or any determination of fault of any person other than the insured.

(i) An insurer shall not presume that a driver is principally at-fault for an accident listed on the driver's public record of traffic violation convictions available from the California Department of Motor Vehicles and similar public records or traffic violation convictions that are available from other jurisdictions (sometimes referred to as the "MVR") or on a subscribing loss underwriting exchange carrier report that does not contain all of the information necessary to determine that a driver was principally at-fault for an accident as defined in subsection (b) and, if applicable that the accident resulted in bodily injury or death. Nor shall an insurer presume that a driver is principally at-fault for an accident when a driver fails or refuses to respond to an insurer's request for information concerning the accident.

AUTHORITY:

Note: Authority cited: *Sections 791.10, 1861.02, 1861.025, 12921 and 12926, Insurance Code; and Calfarm Insurance Company v. Deukmejian 48 Cal. 3d 805 (1989).* Reference: *Sections 488.5, 1861.02 and 1861.025, Insurance Code; and Sections 12810 and 16000, Vehicle Code.*

§ 2632.13.1 Eligibility to Purchase Good Driver Discount Policy

(~~ja~~) In determining eligibility to purchase a ~~g~~Good ~~d~~Driver ~~d~~Discount policy, the requirement that the driver have been licensed to drive a motor vehicle for the previous three years shall mean that the driver has been licensed to drive in any jurisdiction.

(b) This subsection clarifies the application of Insurance Code section 1861.025, subsections (b)(1) and (3) and subsection (d), criteria for eligibility for a Good Driver Discount policy. All other eligibility criteria for Good Driver Discount policies that are provided in section 1861.025 shall also be followed.

(1) Subject to the prohibitions of Insurance Code sections 488 and 488.5, the insurer may assign one violation point for each violation point that the California Department of Motor Vehicles has assessed under California *Vehicle Code* section 12810, Subsections (a), (b), (c), (d), (f), (i) (1), and (j) for traffic violation convictions with conviction dates not more than three years preceding the effective or renewal date of the policy, and which have not been made confidential under the California Vehicle Code;

(2) For violations not occurring in California, the insurer may assign one violation point for each violation point which would have been assessed under subsection (j)(1) above had the violation occurred in California. Violation points shall not be counted pursuant to this Subsection if violation points were counted for the violation pursuant to Subsection (j)(1) above;

(3) For accidents, the insurer shall do the following to determine eligibility for the Good Driver Discount policy:

(i) Assign one violation point for each accident that if a driver has been involved in during the previous three years for which he or she was principally at-fault that resulted only in damage to property pursuant to section 2632.13(b), or

(ii) Determine that the driver is ineligible to purchase a Good Driver Discount policy if, during the previous three years, the driver has been involved in an accident for which he or she was principally at-fault that resulted in a death or bodily injury.

AUTHORITY:

Note: Authority cited: *Sections 1861.02, 1861.025, 12921 and 12926, Insurance Code*; and *Calfarm Insurance Company v. Deukmejian 48 Cal. 3d 805 (1989)*. Reference: *Sections 488, 488.5, 1861.02 and 1861.025, Insurance Code*; and *Sections 12810 ~~and 16000~~, Vehicle Code*.